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Allstate Insurance Company, solely as successor-  
in-interest to Northbrook Excess & Surplus  
Insurance Company, formerly known as  
Northbrook Insurance Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Nammo Talley, Inc.,  
Plaintiff,  
v.

Allstate Insurance Company (solely as  
successor in interests to Northbrook Excess  
and Surplus Insurance Company, formerly  
known as Northbrook Insurance Company);  
Continental Casualty Company; Globe  
Indemnity Company; National Union Fire  
Insurance Company of Pittsburgh, PA;  
Transportation Insurance Company; ABC  
Corporations; and XYZ Companies,  
Defendants.

Case No. 11-CV-01007-JAT

**ANSWER OF ALLSTATE  
INSURANCE COMPANY TO  
PLAINTIFF NAMMO TALLEY'S  
COMPLAINT**

DEMAND FOR JURY TRIAL

Defendant ALLSTATE INSURANCE COMPANY, solely as successor-in-interest  
to Northbrook Excess and Surplus Insurance Company, formerly known as Northbrook  
Insurance Company ("Allstate") hereby answers the Complaint ("Complaint") of Plaintiff  
NAMMO TALLEY, INC. formerly known as Talley Industries, Inc. ("Plaintiff") filed in  
the United States District Court for the District of Arizona, by admitting, denying, and

1 alleging as follows:

2 **THE PARTIES**

3 1. Allstate lacks sufficient information upon which to admit or deny the truth  
4 of the allegations in paragraph 1 of the Complaint and, on that basis, denies the same.

5 2. Allstate admits policies 63-300-019 and 63-002-569 were issued by  
6 Northbrook Insurance Company to Talley Industries (the “Northbrook Policies”). Allstate  
7 lacks information upon which to admit or deny the truth of the remaining allegations in  
8 paragraph 2 of the Complaint and, on that basis, denies the same.

9 3. In answering paragraph 3 of the Complaint, Allstate admits that it is an  
10 Illinois corporation, with its principal place of business in Illinois. Allstate also admits  
11 that it is the successor-in-interest to Northbrook Excess and Surplus Insurance Company,  
12 formerly known as Northbrook Insurance Company.

13 4. Allstate lacks sufficient information upon which to admit or deny the truth  
14 of the allegations in paragraph 4 of the Complaint and, on that basis, denies the same.

15 5. Allstate lacks sufficient information upon which to admit or deny the truth  
16 of the allegations in paragraph 5 of the Complaint and, on that basis, denies the same.

17 6. Allstate lacks sufficient information upon which to admit or deny the truth  
18 of the allegations in paragraph 6 of the Complaint and, on that basis, denies the same.

19 7. Allstate lacks sufficient information upon which to admit or deny the truth  
20 of the allegations in paragraph 7 of the Complaint and, on that basis, denies the same.

21 8. In answering paragraph 8 of the Complaint, Allstate admits that policies 63-  
22 300-019 and 63-002-569 were issued by Northbrook Insurance Company and that it wrote  
23 liability insurance. Allstate lacks sufficient information upon which to admit or deny the  
24 truth of the allegations in paragraph 8 relating to the other defendant insurers and, on that  
25 basis, denies the same. Allstate denies the remaining allegations in paragraph 8.

26 **JURISDICTION AND VENUE**

27 9. In answering paragraph 9 of the Complaint, Allstate re-alleges each of its  
28 responses to paragraphs 1 through 8, inclusive, as though fully set forth herein.

1           10. The allegations in Paragraph 10 of the Complaint are conclusions of law to  
2 which no response is required. To the extent a response is required, Allstate denies the  
3 same.

4           11. The allegations in Paragraph 11 of the Complaint are conclusions of law to  
5 which no response is required. To the extent a response is required, Allstate denies the  
6 same.

7           12. The allegations in Paragraph 12 of the Complaint are conclusions of law to  
8 which no response is required. To the extent a response is required, Allstate denies the  
9 same.

### 10           **GENERAL ALLEGATIONS**

11           13. In answering paragraph 13 of the Complaint, Allstate re-alleges each of its  
12 responses to paragraphs 1 through 12, inclusive, as though fully set forth herein.

13           14. Allstate states that paragraph 14 of the Complaint is a declaratory statement  
14 characterizing the nature of Plaintiff's Complaint, and that no response is required. To the  
15 extent a response is required, Allstate denies the same.

### 16           **The Underlying Liability**

17           15. Allstate lacks sufficient information upon which to admit or deny the truth  
18 of the allegations in paragraph 15 of the Complaint and, on that basis, denies the same.

19           16. Allstate denies the allegations of paragraph 16.

20           17. Allstate lacks sufficient information upon which to admit or deny the truth  
21 of the allegations in paragraph 17 of the Complaint and, on that basis denies the same.

22           18. To the extent the allegations of paragraph 18 of the Complaint are directed  
23 to defendants other than Allstate, no answer is required. In any event, Allstate lacks  
24 sufficient information upon which to admit or deny the truth of the allegations in  
25 paragraph 18 of the Complaint and, on that basis, denies the same.

26           19. In answering paragraph 19 of the Complaint, Allstate states that the terms of  
27 the Consent Judgment speak for themselves. Allstate lacks sufficient information upon  
28 which to admit or deny the truth of the remaining allegations in paragraph 19 and, on that

1 basis, denies the same.

2 20. Allstate lacks sufficient information upon which to admit or deny the truth  
3 of the allegations in paragraph 20 of the Complaint and, on that basis, denies the same.

4 21. Allstate lacks sufficient information upon which to admit or deny the truth  
5 of the allegations in paragraph 21 of the Complaint and, on that basis, denies the same.

6 22. Allstate lacks sufficient information upon which to admit or deny the truth  
7 of the allegations in paragraph 22 of the Complaint and, on that basis, denies the same.

8 23. Allstate lacks sufficient information upon which to admit or deny the truth  
9 of the allegations in paragraph 23 of the Complaint and, on that basis, denies the same.

10 24. Allstate lacks sufficient information upon which to admit or deny the truth  
11 of the allegations in paragraph 24 of the Complaint and, on that basis, denies the same.

#### 12 **Water Bore Out Area**

13 25. Allstate lacks sufficient information upon which to admit or deny the truth  
14 of the allegations in paragraph 25 of the Complaint and, on that basis, denies the same.

15 26. Allstate lacks sufficient information upon which to admit or deny the truth  
16 of the allegations in paragraph 26 of the Complaint and, on that basis, denies the same.

17 27. Allstate lacks sufficient information upon which to admit or deny the truth  
18 of the allegations in paragraph 27 of the Complaint and, on that basis, denies the same.

19 28. Allstate lacks sufficient information upon which to admit or deny the truth  
20 of the allegations in paragraph 28 of the Complaint and, on that basis, denies the same.

21 29. In answering paragraph 29 of the Complaint, Allstate denies that the  
22 leaching of perclohorate from ponds into groundwater was unintentional and unexpected.  
23 Allstate lacks sufficient information upon which to admit or deny the truth of the  
24 remaining allegations of paragraph 29 and on that basis, denies the same.

#### 25 **Thermal Treatment Unit**

26 30. Allstate lacks sufficient information upon which to admit or deny the truth  
27 of the allegations in paragraph 30 of the Complaint and, on that basis, denies the same.

28 31. Allstate lacks sufficient information upon which to admit or deny the truth

1 of the allegations in paragraph 31 of the Complaint and, on that basis, denies the same.

2 32. Allstate lacks sufficient information upon which to admit or deny the truth  
3 of the allegations in paragraph 32 of the Complaint and, on that basis, denies the same.

4 33. Allstate denies that contamination from the disposal of solid propellant was  
5 unexpected. Allstate lacks sufficient information upon which to admit or deny the truth of  
6 the remaining allegations in paragraph 33 of the Complaint and, on that basis, denies the  
7 same.

8 34. Allstate denies that contamination from the burning of propellants at the Site  
9 was unintentional. Allstate lacks sufficient information upon which to admit or deny the  
10 truth of the remaining allegations in paragraph 34 of the Complaint and, on that basis,  
11 denies the same.

#### 12 **The Policies**

13 35. Allstate lacks sufficient information upon which admit or deny the truth of  
14 the allegations in paragraph 35 of the Complaint and, on that basis, denies the same.

15 36. Allstate admits that the Northbrook Policies were issued by Northbrook  
16 Insurance Company and that such policies provide excess insurance subject to the terms,  
17 conditions, limitations and exclusions in each policy. Allstate denies the remaining  
18 allegations in paragraph 36 of the Complaint to the extent they relate to Allstate. Allstate  
19 lacks information upon which to admit or deny the truth of the allegations in paragraph 36  
20 to the extent they relate to the other defendant insurers and, on that basis, denies the same.

21 37. The allegations in paragraph 37 are introductory statements for which no  
22 response is required. To the extent a response is required, Allstate denies the same.

23 38. Allstate states that the terms of the Northbrook Policies speak for  
24 themselves. Allstate denies the remaining allegations in paragraph 38 of the Complaint to  
25 the extent they pertain to Allstate and the Northbrook Policies. Allstate lacks sufficient  
26 information upon which to admit or deny the truth of the allegations of paragraph 38 of  
27 the Complaint to the extent they pertain to the other defendant insurers and, on that basis,  
28 denies the same.

1           39. Allstate denies that the policy language quoted in paragraph 39 of the  
2 Complaint is contained in the Northbrook Policies. Allstate lacks sufficient information  
3 upon which to admit or deny the truth of the remaining allegations in paragraph 39 of the  
4 Complaint and, on that basis, denies the same.

5           40. Allstate states that the terms of the Northbrook Policies speak for  
6 themselves. Allstate denies that the Northbrook Policies contain provisions that are  
7 generally similar to the insurance provisions cited by Plaintiff. Allstate lacks sufficient  
8 information upon which to admit or deny the truth of the remaining allegations in  
9 paragraph 40 of the Complaint and, on that basis, denies the same.

10          41. Allstate lacks sufficient information upon which to admit or deny the truth  
11 of the allegations in paragraph 41 of the Complaint and, on that basis, denies the same.

12          42. Allstate lacks sufficient information upon which to admit or deny the truth  
13 of the allegations in paragraph 42 of the Complaint and, on that basis, denies the same.

14          43. Allstate states that the terms of the Northbrook Policies speak for  
15 themselves. Allstate denies the allegations in paragraph 43 of the Complaint insofar as  
16 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
17 upon which to admit or deny the truth of the remaining allegations in paragraph 43 of the  
18 Complaint and, on that basis denies the same.

19          44. Allstate denies the allegations in paragraph 44 of the Complaint insofar as  
20 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
21 upon which to admit or deny the truth of the remaining allegations in paragraph 44 of the  
22 Complaint and, on that basis, denies the same.

23          45. Allstate lacks information upon which to admit or deny the truth of the  
24 allegations in paragraph 45 of the Complaint and, on that basis, denies the same.

25          46. Allstate denies the allegations in paragraph 46 of the Complaint insofar as  
26 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
27 upon which to admit or deny the truth of the remaining allegations in paragraph 46 of the  
28 Complaint and, on that basis, denies the same.

1           47. Allstate denies the allegations in paragraph 47 of the Complaint insofar as  
2 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
3 upon which to admit or deny the truth of the remaining allegations in paragraph 47 of the  
4 Complaint and, on that basis, denies the same.

5           48. The allegations of paragraph 48 of the Complaint are conclusions of law to  
6 which no answer is required. To the extent an answer is required, Allstate denies the  
7 allegations in paragraph 48 of the Complaint.

8           49. The allegations in paragraph 49 of the Complaint are conclusions of law to  
9 which no answer is required. To the extent an answer is required, Allstate denies the  
10 allegations paragraph 49 of the Complaint.

11           50. The allegations of paragraph 50 are conclusions of law to which no answer  
12 is required. To the extent that an answer is required, Allstate answers that its obligations  
13 to its insureds under the Northbrook Policies are delineated by the specific terms of the  
14 Northbrook Policies. Allstate further denies that it has a duty to defend or indemnify  
15 Plaintiff in connection with the underlying claims under the terms of the Northbrook  
16 Policies. Allstate denies the remaining allegations in paragraph 50 of the Complaint  
17 insofar as they pertain to Allstate and the Northbrook Policies. Allstate lacks sufficient  
18 information upon which to admit or deny the truth of the allegations with respect to the  
19 other defendants and, on that basis, denies the same.

20           51. Allstate denies the allegations in paragraph 51 of the Complaint insofar as  
21 they pertain to Allstate and the Northbrook Policies. Allstate lacks information upon  
22 which to admit or deny the truth of the remaining allegations in paragraph 51 of the  
23 Complaint and, on that basis, denies the same.

24           52. Allstate states that the allegations in paragraph 52 of the Complaint are legal  
25 conclusions to which no answer is required. To the extent an answer is required, Allstate  
26 states that its obligations to its insureds under the Northbrook Policies are delineated by  
27 the specific terms of the Northbrook Policies as interpreted by the applicable law. Allstate  
28 further answers that Plaintiff's allegations in paragraph 52 are premature as there has not



1 been any determination that Nammo Talley is an insured under the Northbrook Policies or  
2 that Arizona law applies to this lawsuit. Allstate lacks sufficient information upon which  
3 to admit or deny the truth of the allegations in paragraph 52 of the Complaint and, on that  
4 basis, denies the same.

5 53. Allstate denies the allegations in paragraph 53 of the Complaint insofar as  
6 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
7 upon which to admit or deny the truth of the remaining allegations in paragraph 53 of the  
8 Complaint and, on that basis, denies the same.

9 54. Allstate denies the allegations in paragraph 54 of the Complaint insofar as  
10 they relate to the Northbrook Policies. Allstate lacks sufficient information upon which to  
11 admit or deny the truth of the remaining allegations in paragraph 54 of the Complaint and,  
12 on that basis, denies the same.

13 55. Allstate admits that it has not acknowledged any coverage obligation for the  
14 claims in issue in this Complaint because they do not fall within the scope of coverage  
15 afforded by the Northbrook Policies. Allstate denies the remaining allegations in  
16 paragraph 55 of the Complaint insofar as they relate to Allstate and the Northbrook  
17 Policies. Allstate lacks sufficient information upon which to admit or deny the truth of the  
18 remaining allegations in paragraph 55 of the Complaint and, on that basis, denies the  
19 same.

20 56. Allstate denies the allegations in paragraph 56 of the Complaint insofar as  
21 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
22 upon which to admit or deny the truth of the remaining allegations in paragraph 56 of the  
23 Complaint and, on that basis, denies the same.

24 57. Allstate lacks sufficient information upon which to admit or deny the truth  
25 of the allegations in paragraph 57 of the Complaint and, on that basis, denies the same.

26 58. Allstate denies the allegations in paragraph 58 of the Complaint insofar as  
27 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
28 upon which to admit or deny the truth of the remaining allegations in paragraph 58 of the



1 Complaint and, on that basis, denies the same.

2 59. Allstate admits that it has not acknowledged a duty to defend or indemnify  
3 Plaintiff with respect to the claims in issue in the Complaint because no such obligations  
4 exist under the terms of the Northbrook Policies. Allstate lacks sufficient information  
5 upon which to admit or deny the truth of the remaining allegations in paragraph 59 of the  
6 Complaint and, on that basis, denies the same.

7 60. Allstate denies the allegations in paragraph 60 of the Complaint insofar as  
8 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
9 upon which to admit or deny the truth of the remaining allegations in paragraph 60 of the  
10 Complaint and, on that basis, denies the same.

11 61. Allstate denies the allegations in paragraph 61 of the Complaint insofar as  
12 they relate to Allstate and the Northbrook Policies. Allstate lacks sufficient information  
13 upon which to admit or deny the truth of the remaining allegations in paragraph 61 of the  
14 Complaint and, on that basis, denies the same.

## 15 **COUNT I**

### 16 **(Declaratory Judgment)**

17 62. In answering paragraph 62 of the Complaint, Allstate re-alleges each of its  
18 answers to paragraphs 1 through 61, inclusive, as though fully set forth herein.

19 63. Allstate states that paragraph 63 of the Complaint is a legal conclusion to  
20 which an answer is not required. To the extent an answer is required, Allstate lacks  
21 sufficient information upon which to admit or deny the truth of the allegations in  
22 paragraph 63 and, on that basis, denies the same.

23 64. Allstate states that paragraph 64 of the Complaint is a declaratory statement  
24 of the nature of Plaintiff's claim for which an answer is not required. To the extent an  
25 answer is required, Allstate lacks sufficient information upon which to admit or deny the  
26 truth of the allegations in paragraph 64 and, on that basis, denies the same.

27 65. Allstate denies the allegations of paragraph 65 of the Complaint insofar as  
28 they relate to Allstate. Allstate lacks sufficient information upon which to admit or deny

1 the truth of the remaining allegations in paragraph 65 and, on that basis, denies the same.

2 66. Allstate states that paragraph 66 of the Complaint is a declaratory statement  
3 of the nature of Plaintiff's claims, and that an answer to the statement is not required. To  
4 the extent an answer is required, Allstate denies the allegations in paragraph 66 of the  
5 Complaint insofar as they pertain to Allstate and the Northbrook Policies. Allstate further  
6 denies that Plaintiff is entitled to any of the relief it has requested in connection with this  
7 claim for relief. Allstate lacks sufficient information upon which to admit or deny the  
8 truth of the allegations in paragraph 66 to the extent they pertain to other defendants and,  
9 on that basis, denies the same.

## 10 **COUNT II**

### 11 **(Breach of Contract)**

12 67. In answering paragraph 67 of the Complaint, Allstate re-alleges each of its  
13 answers to paragraphs 1 through 66, inclusive, as though fully set forth herein.

14 68. Allstate admits that it has not acknowledged a duty to defend or indemnify  
15 Plaintiff in connection with the claims in issue in this Complaint because they do not fall  
16 within the coverage afforded by the Northbrook Policies, based on the information that  
17 has been provided to Allstate to date. Allstate denies the remaining allegations of  
18 paragraph 68 of the Complaint insofar as they relate to Allstate and the Northbrook  
19 Policies. Allstate lacks information upon which to admit or deny the truth of the  
20 remaining allegations in paragraph 68 and, on that basis, denies the same.

21 69. Allstate denies the allegations of paragraph 69 of the Complaint insofar as  
22 they relate to Allstate and the Northbrook Policies. Allstate further denies that Plaintiff is  
23 entitled to any of the relief it has requested with respect to this claim for relief. Allstate  
24 lacks information upon which to admit or deny the truth of the remaining allegations in  
25 paragraph 69 of the Complaint and, on that basis, denies the same.

## 26 **COUNT III**

### 27 **(Breach of the Duty of Good Faith and Fair Dealing)**

28 70. In answering paragraph 70 of the Complaint, Allstate re-alleges each of its

1 answers to paragraphs 1 through 69, inclusive, as though fully set forth herein.

2 71. Allstate states that paragraph 71 of the Complaint is a legal conclusion for  
3 which an answer is not required. To the extent an answer is required, Allstate answers  
4 that Plaintiff's allegations are premature insofar as there has been no determination that  
5 Nammo Talley is an insured under the Northbrook Policies or that Allstate owes any  
6 duties to it. Allstate, therefore, lacks sufficient information upon which to admit or deny  
7 the truth of the allegations in paragraph 71 and, on that basis, denies the same.

8 72. Allstate denies the allegations of paragraph 72 of the Complaint insofar as  
9 they relate to Allstate and the Northbrook Policies. Allstate lacks information upon which  
10 to admit or deny the truth of the remaining allegations in paragraph 72 and, on that basis,  
11 denies the same.

12 73. Allstate states that the allegations in paragraph 73 of the Complaint are legal  
13 conclusions to which no answer is required. To the extent an answer is required, Allstate  
14 denies the allegations of paragraph 73 of the Complaint insofar as they relate to Allstate.  
15 Allstate lacks information upon which to admit or deny the truth of the remaining  
16 allegations in paragraph 73 and, on that basis, denies the same.

17 74. Allstate denies the allegations of paragraph 74 of the Complaint insofar as  
18 they relate to Allstate and the Northbrook Policies. Allstate further denies that Plaintiff is  
19 entitled to any of the relief it has requested with respect to this claim for relief. Allstate  
20 lacks information upon which to admit or deny the truth of the remaining allegations in  
21 paragraph 74 and, on that basis, denies the same.

## 22 **COUNT IV**

### 23 **(Common Law Negligent Misrepresentation and Violation of A.R.S. §20-443)**

24 75. In answering paragraph 75 of the Complaint, Allstate re-alleges each of its  
25 responses to paragraphs 1 through 74, inclusive, as though fully set forth herein.

26 76. Allstate denies the allegations of paragraph 76 of the Complaint insofar as  
27 they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of  
28 the remaining allegations in paragraph 76 and, on that basis, denies the same.

1           77. Allstate lacks information upon which to admit or deny the truth of the  
2 allegations in paragraph 77 and, on that basis, denies the same.

3           78. Allstate denies the allegations of paragraph 78 of the Complaint insofar as  
4 they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of  
5 the remaining allegations in paragraph 78 and, on that basis, denies the same.

6           79. Allstate denies the allegations of paragraph 79 of the Complaint insofar as  
7 they relate to Allstate. Allstate lacks information upon which to admit or deny the truth of  
8 the remaining allegations in paragraph 79 and, on that basis, denies the same.

9           80. Allstate denies the allegations of paragraph 80 of the Complaint insofar as  
10 they relate to Allstate. Allstate further denies that Plaintiff is entitled to the relief it has  
11 requested with respect to this claim for relief. Allstate lacks information upon which to  
12 admit or deny the truth of the remaining allegations in paragraph 80 and, on that basis,  
13 denies the same.

## 14           **AFFIRMATIVE DEFENSES**

### 15           **FIRST AFFIRMATIVE DEFENSE**

16           (Failure to State a Claim)

17           81. As a first affirmative defense, Allstate states that the Complaint, and each of  
18 the claims for relief alleged therein, fails to allege facts sufficient to state a claim against  
19 Allstate for which relief may be granted.

### 20           **SECOND AFFIRMATIVE DEFENSE**

21           (Subject to Policy Terms)

22           82. As a second affirmative defense, Allstate states that the duty of Allstate, if  
23 any, to defend or indemnify Plaintiff, or to contribute to the defense or indemnification of  
24 Plaintiff, or to reimburse Plaintiff for any amounts, is limited by and is subject to all of the  
25 terms, conditions, exclusions, limits of liability, retentions, limitations, and other  
26 provisions contained in the Northbrook Policies.

### 27           **THIRD AFFIRMATIVE DEFENSE**

28           (No Coverage for Punitive or Exemplary Damages)





**TWELFTH AFFIRMATIVE DEFENSE**

(Exhaustion of Underlying Insurance)

92. As a twelfth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that all insurance underlying the Northbrook Policies has not been properly exhausted.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Late Notice)

93. As an thirteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent the Plaintiff failed to provide timely notice of the claims for which the Plaintiff seeks coverage.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Voluntary Payments)

94. As a fourteenth affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff incurred any obligation or entered into any agreement without the express consent of Allstate.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Impairment of Subrogation, Indemnity and Contribution)

95. As a fifteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent Allstate's rights of subrogation, indemnity or contribution have been impaired.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Event Not Contingent or Unknown)

96. As a sixteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that Plaintiff seeks coverage for any claim, event, occurrence, or loss which was in progress or was not contingent or unknown at or before the time the respective Northbrook Policies were issued.

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**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

97. As a seventeenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the applicable statute of limitations.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Waiver, Estoppel, Laches and Unclean Hands)

98. As an eighteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Aircraft Product Exclusions)

99. As a nineteenth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the aircraft product exclusions contained in the Northbrook Policies.

**TWENTIETH AFFIRMATIVE DEFENSE**

(Other Insurance)

100. As a twentieth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the "other insurance" provisions in the Northbrook Policies.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Failure to Sue Necessary Party)

101. As a twenty-first affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent Plaintiff has failed to sue a party necessary to the resolution of its claims.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(No Suit or Claim)

102. As a twenty-second affirmative defense, Allstate states that there is no duty to defend or indemnify the insured for any matters that do not constitute a suit or claim within the meaning of the Northbrook Policies.

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**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

103. As a twenty-fifth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that Plaintiff failed to mitigate some or all of its alleged damages.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

(Prior Insurance/Noncumulation)

104. As a twenty-sixth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the "Prior Insurance and Noncumulation of Liability" and the Noncumulation of Liability – Same Occurrence" conditions contained in the Northbrook Policies.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

(Payment of Defense Costs)

105. As a twenty-seventh affirmative defense, Allstate states that any obligation on the part of Allstate to pay or reimburse defense costs, if any such obligation exists, is limited to a duty to indemnify the insured for those reasonable and necessary costs incurred by the insured in the defense "suits" or claims that have been proven to fall within the scope of the respective Northbrook policy's coverage.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

(No Assignment)

106. As a twenty-eighth affirmative defense, Allstate states that Plaintiff's claims are barred or limited to the extent that there has been any assignment of interest under the Northbrook Policies without Allstate's consent.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

(Third Party Fault)

107. As a twenty-ninth affirmative defense, Allstate states that any loss, harm, injury, or damage suffered by Plaintiff was caused or contributed to by the acts and/or omissions of third parties, including but not limited to parties not named in this action,

1 and therefore, liability or responsibility for Plaintiff's alleged losses, damages and  
 2 injuries, if any, must be allocated or apportioned among those responsible parties.

### 3 **THIRTIETH AFFIRMATIVE DEFENSE**

4 (Exhaustion of Limits of Liability)

5 108. As a thirtieth affirmative defense, Allstate states that coverage for Plaintiff's  
 6 claims is barred or limited to the extent that the Northbrook Policy limits have been  
 7 exhausted by payment of other claims.

### 8 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

9 (Self-Insurance and/or Insolvency)

10 109. As a thirty-first affirmative defense, Allstate states that Plaintiff's claims are  
 11 barred or limited to the extent Plaintiff must assume responsibility or liability for periods  
 12 of self-insurance, periods of insolvency of other insurers, and periods where other policies  
 13 are unavailable for other reasons.

### 14 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

15 (Retained Limit)

16 110. As a thirty-second affirmative defense, Allstate states that Plaintiff's claims  
 17 are barred or limited to the extent that the retained limit(s) applicable to its claims have  
 18 not been paid.

### 19 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

20 (Applicable Limits)

21 111. As a thirty-third affirmative defense, Allstate states that there is no  
 22 obligation under the Northbrook Policies for any amounts in excess of the applicable  
 23 limits of liability under each policy.

### 24 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

25 (No Actual Controversy)

26 112. As a thirty-fourth affirmative defense, Allstate states that Plaintiff's causes  
 27 of action are subject to dismissal to the extent there is no actual or justiciable controversy  
 28 involving the Northbrook Policies.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

(Failure to Maintain Underlying Insurance)

113. As a thirty-fifth affirmative defense, Allstate states that Plaintiff's causes of action are barred or limited by the failure to maintain underlying insurance as required by the terms of the Northbrook Policies.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

(Loss Payable)

114. As a thirty-sixth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the failure to comply with the "Loss Payable" condition in each Northbrook Policy.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

(Apportionment)

115. As a thirty-seventh affirmative defense, Allstate states that, Plaintiff's claims may be barred or limited to the extent other parties, including those who are not parties to this action may be legally, contractually, equitably or otherwise obligated for the damages and/or monies sought by Plaintiff; therefore, in the event of a finding of any liability in favor of Plaintiff against Allstate, an apportionment of liability must be made by the court or jury among all responsible parties in accordance with legal and equitable principles.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

(Cooperation Clause)

116. As a thirty-eighth affirmative defense, Allstate states that Plaintiff's claims are barred or limited by the Plaintiff's failure to comply with the "Assistance and Cooperation" clause in the Northbrook Policies.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

(Prophylactic Costs)

117. As a thirty-ninth affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that it seeks to recover costs to prevent future harm.

**FORTIETH AFFIRMATIVE DEFENSE**

(Misrepresentations)

118. As a fortieth defense, Allstate states that Plaintiff's claims are barred or limited to the extent that there were any material misstatements or omissions of fact by the insured in connection with the issuance of the Northbrook Policies.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

(Ripeness)

119. As a forty-first defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff's liability has not been rendered certain and, therefore, its claims for payment are not ripe.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

(Compliance with Conditions)

120. As a forty-second affirmative defense, Allstate states that Plaintiff's claims are barred to the extent that Plaintiff has failed to comply with any of the conditions contained in the Northbrook Policies.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

(Underground Resources Exclusion)

121. As a forty-third affirmative defense, Allstate states that Plaintiffs' claims are barred to the extent they fall within the "Underground Resources" exclusions contained the Northbrook Policies.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

(Entitlement to Offset)

122. As a forty-fourth affirmative defense, Allstate states that it is entitled to a set-off for any amounts paid by or owed by other insurers or third parties.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

(Losses Not Yet Arisen or Amounts Not Yet Paid)

123. As a forty-fifth affirmative defense, Allstate states that there is no coverage under the Northbrook Policies to the extent Plaintiff seeks defense or indemnification for

1 losses that have not yet arisen or for amounts Plaintiff has not yet paid.

2 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

3 (Intentional Injury or Damage)

4 124. As a forty-sixth affirmative defense, Allstate states that Plaintiff's claims are  
5 barred or limited to the extent any injury or damage was caused intentionally or at the  
6 direction of the insured.

7 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

8 (Intervening Cause)

9 125. As a forty-seventh affirmative defense, Allstate states that Plaintiff's  
10 damages, if any, were not the proximate result of Allstate's conduct.

11 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

12 (Improper Purported Exhaustion)

13 126. As a forty-eighth affirmative defense, Allstate states that Plaintiff's claims  
14 may be barred or limited to the extent the insured has improperly applied a per occurrence  
15 or aggregate limit and/or has improperly purported to have exhausted the limits of any  
16 primary or underlying or lower level policies.

17 **FORTY-NINTH AFFIRMATIVE DEFENSE**

18 (No "Drop Down")

19 127. As a forty-ninth affirmative defense, Allstate states that Plaintiff's causes of  
20 action may be barred or limited in that the Northbrook Policies do not require them to  
21 drop down or to provide coverage in place of any insurer which has become insolvent or  
22 any policy which has become invalid, uncollectible or otherwise unavailable.

23 **FIFTIETH AFFIRMATIVE DEFENSE**

24 (Additional Defenses)

25 128. As a fiftieth affirmative defense, Allstate states that it presently has  
26 insufficient knowledge or information to determine whether it may have additional, as yet  
27 unstated, defenses available. Allstate reserves the right to assert additional defenses in the  
28 event discovery indicates that they would be appropriate.

WHEREFORE, Allstate prays for judgment as follows:

1. That Plaintiff take nothing and be granted no relief by reason of its Complaint;
2. That the Complaint be dismissed as against Allstate;
3. That a judicial declaration issue to the effect that Allstate has no duty to defend or indemnify Plaintiff, or to contribute to the defense or indemnification of Plaintiff in connection with the claims asserted in Plaintiff's Complaint;
4. That Allstate be awarded its reasonable attorney's fees and expenses, costs of suit, and other such and further relief as the Court may deem just and proper.

Dated: December 8, 2011

By: s/ Robert S. Murphy  
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Attorneys for Defendant  
Allstate Insurance Company, solely as successor-  
in-interest to Northbrook Excess & Surplus  
Insurance Company, formerly known as  
Northbrook Insurance Company



**CERTIFICATE OF SERVICE**

☒ I hereby certify that on December 8, 2011, I electronically transmitted the attached document entitled:

**ANSWER OF ALLSTATE INSURANCE COMPANY  
TO PLAINTIFF NAMMO TALLEY'S COMPLAINT**

to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: December 8, 2011

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